

## **TAX COMPLIANCE AGREEMENT**

**[To be revised when no Escrow Agreement is used to delete references to the Escrow Agreement, the Escrow Agent and the Escrow Fund, including investment and rebate instructions.]**

[1] Lessee: Louisville/Jefferson County Metro Government

**527 W. Jefferson Street, Suite  
Louisville, Kentucky 4020**

**Attention: \_\_\_\_\_**

**Telephone: (502) 574-5700**

**Telecopier: \_\_\_\_\_**

**Sublessee: University Medical Center, Inc., d/b/a University of Louisville Hospital  
530 S. Jackson Street  
Louisville, Kentucky 40202  
Attention: Controller  
Telephone: (502) 562-4012  
Telecopier: (502) 562-3333**

**Escrow  
Agent: Branch Banking and Trust Company  
223 West Nash Street  
Wilson, North Carolina 27893  
Attention: Corporate Trust Department  
Telephone: (252) 246-2177  
Telecopier: (252) 246-4303**

**THIS TAX COMPLIANCE AGREEMENT** (the "Tax Compliance Agreement"), dated as of \_\_\_\_\_, \_\_\_\_\_, is entered into among Lessee, Sublessee and Escrow Agent.

### **RECITALS**

**1.** This Tax Compliance Agreement is being executed and delivered in connection with Schedule No. \_\_ to that certain Master Lease and Sublease Agreement dated as of August 1, 2008 (the "Master Lease and Sublease Agreement"), among Siemens Public, Inc. ("Lessor"), Lessee and Sublessee (said Schedule, including the Master Lease and Sublease Agreement, which is incorporated therein by reference, is referred to herein together as the "Agreement"), copies of which documents pursuant to the Escrow Agreement have been furnished to Escrow Agent, for the purpose of providing funds for certain purposes as described in this Tax Compliance Agreement and in the Agreement.

**2.** Under the Agreement, (a) Lessor will lease certain property (the "Equipment") to Lessee in exchange for Lessee's agreement to make Lease Payments (as therein defined), but solely from the sources specified in the Agreement, and (b) Lessor will make available certain funds to pay costs of the acquisition and installation of the Equipment as set forth in the Agreement, the Escrow Agreement dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Escrow Agreement"), among Lessor, Lessee, Sublessee and Escrow Agent, and this Tax Compliance Agreement.

**3.** Under the Agreement, to obtain funds to pay the Lease Payments, Lessee will sublease the Equipment to Sublessee in exchange for Sublessee's agreement to make Sublease Payments (as therein defined) directly to Lessor, as assignee of Lessee, on dates in amounts that correspond with the dates and amounts of, and are sufficient to discharge Lessee's obligation to pay, the Lease Payments.

4. In order for the interest portions of the Lease Payments to be excluded from gross income for federal income tax purposes, Lessee, Sublessee, and Escrow Agent must comply with certain provisions of the Internal Revenue Code of 1986, as amended (the “Code”), and the applicable regulations and rulings issued by the U.S. Treasury Department (the “Regulations”), regarding the uses and investment of the proceeds of the Agreement and certain other money relating thereto.

5. Lessee, Sublessee and Escrow Agent are entering into this Tax Compliance Agreement to set forth certain representations, facts, expectations, terms and conditions relating to the use and investment of the proceeds of the Agreement and of certain related money, to establish and maintain the exclusion of interest portions of the Lease Payments from gross income for federal income tax purposes, and to provide guidance for complying with the arbitrage rebate provisions of Code § 148(f).

**NOW, THEREFORE**, in consideration of the foregoing and the mutual representations, covenants and agreements set forth in this Tax Compliance Agreement, Lessee, Sublessee and Escrow Agent represent and agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.1. Definitions of Words and Terms.** Except as otherwise provided in this Tax Compliance Agreement or unless the context otherwise requires, capitalized words and terms used here have the same meanings as set forth in **Section 1.01** of the Master Lease and Sublease Agreement; and certain other words and phrases have the meanings assigned in Code § 148 and the Regulations. In addition, the following capitalized terms are defined:

**“Agreement”** means the Schedule, including the Master Lease and Sublease Agreement.

**“Agreement Year”** means each one-year period (or shorter period for the first Agreement Year) ending the same month and day of each year as the month and day on which the last Lease Payment is scheduled to become due.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Computation Date”** means (1) each anniversary of the Issue Date (or other dates selected by Lessee and Sublessee consistent with the Regulations), and (2) the date the last Lease Payment is paid in full.

**“Equipment”** means the property described as such in the Agreement, which property is further described on **Exhibit C**.

**“Escrow Agent”** means the Escrow Agent identified above and its successor or successors, and any other corporation or association which may be substituted to serve as escrow agent under the Escrow Agreement.

**“Escrow Agreement”** means the Escrow Agreement dated as of the date hereof among Lessor, Lessee, Sublessee and Escrow Agent, as supplemented and amended from time to time.

**“Escrow Fund”** means the Escrow Fund established under the Escrow Agreement.

**“Gross Proceeds”** means (1) sale proceeds (any amounts actually or constructively received by Lessee from the assignment of its right to receive the Lease Payments, including amounts used to pay underwriting discount or fees, but excluding pre-issuance accrued interest); (2) investment proceeds (any amounts received from investing sale proceeds, other investment proceeds); (3) any amounts held in a sinking fund for the

Agreement; (4) any amounts held in a pledged fund or reserve fund for the Agreement; and (5) any other replacement proceeds. Specifically, Gross Proceeds include all amounts held in the Escrow Fund.

**“Guaranteed Investment Contract”** is any Investment with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, including any agreement to supply Investments on two or more future dates (*e.g.*, a forward supply contract).

**“Investment”** means any security, obligation, annuity contract or other investment-type property which is purchased directly with, or otherwise allocated to, Gross Proceeds. “Investment” does not include obligations the interest on which is excluded from federal gross income.

**“IRS”** means the United States Internal Revenue Service.

**“Issue Date”** means the date the Agreement is executed and delivered, being the date hereof.

**“Lease Payments”** means the Lease Payments payable by Lessee pursuant to the Agreement.

**“Lessee”** means the Louisville/Jefferson County Metro Government, a consolidated local government and political subdivision of the Commonwealth of Kentucky.

**“Lessor”** means Siemens Public, Inc., a Delaware corporation, and its successors and assigns.

**“Master Lease and Sublease Agreement”** means that certain Master Lease and Sublease Agreement dated as of August 1, 2008, among Lessor, Lessee and Sublessee.

**“Minor Portion”** means the lesser of \$100,000 or 5% of the sale proceeds of the Agreement.

**“Net Proceeds”** means (a) any amounts actually or constructively received from the right to receive the Lease Payments, including any amounts used to pay underwriter’s discount or compensation, less (b) any pre-issuance accrued interest, plus (c) investment earnings on those amounts.

**“Reasonable Retainage”** means Gross Proceeds retained by Sublessee for reasonable business purposes, such as to ensure or promote compliance with a construction contract; provided that such amount may not exceed, for purposes of the 18-month spending test, 5% of Net Proceeds on the date 18 months after the Issue Date.

**“Rebate Analyst”** means Special Tax Counsel, an independent certified public accountant, or such other person or firm selected by Lessee, and acceptable to Escrow Agent and Lessor, to compute arbitrage rebate.

**“Regulations”** means all regulations issued by the U.S. Treasury Department to implement the requirements of Code §§ 103 and 141 through 150 and applicable to the Agreement.

**“Schedule”** means Schedule No. \_\_\_ among Lessor, Lessee and Sublessee, to the Master Lease and Sublease Agreement.

**“Special Tax Counsel”** means \_\_\_\_\_ or other firm of nationally recognized bond counsel acceptable to Lessee, Lessor and Sublessee.

**“Sublessee”** means the Sublessee identified above and its successors and assigns.

**“Tax Compliance Agreement”** means this Tax Compliance Agreement among Lessee, Sublessee and Escrow Agent, as originally executed and as it may be amended and supplemented.

**“Tax-Exempt Organization”** means a nonprofit organization under the laws of the United States of America or any state thereof, that is described in Code § 501(c)(3), is exempt from federal income taxes under Code § 501(a) or corresponding provisions of federal income tax laws from time to time in effect.

**“Transcript”** means the Transcript of Proceedings relating to the authorization, execution and delivery of the Agreement.

**“Yield”** means yield computed under § 1.148-4 of the Regulations with respect to the Agreement, and computed under § 1.148-5 of the Regulations with respect to an Investment.

## ARTICLE II

### GENERAL REPRESENTATIONS AND COVENANTS

**Section 2.1. Representations and Covenants of Lessee.** Lessee represents and covenants to Sublessee and Escrow Agent as follows:

(a) *Organization and Lessee.* Lessee (1) is a political subdivision of the Commonwealth, and (2) has lawful power and authority to enter into, execute and deliver the Agreement, the Escrow Agreement and this Tax Compliance Agreement and to carry out its obligations under those documents, and (3) by all necessary action has been duly authorized to execute and deliver the Agreement, the Escrow Agreement and this Tax Compliance Agreement, acting by and through its duly authorized officials.

(b) *Tax-Exempt Status of Agreement.* Lessee (to the extent within its power or direction) (1) will not use any money on deposit in any fund or account maintained in connection with the Agreement or the Lease Payments, whether or not such money was derived from the sale of the Agreement or from any other source, in a manner that would cause the Agreement to be an “arbitrage bond” within the meaning of Code § 148, and (2) will not otherwise use or permit the use of any Net Proceeds or any other funds of Lessee, directly or indirectly, in any manner, and will not take or permit to be taken any other action, that would cause interest portions of the Lease Payments to be included in gross income for federal income tax purposes.

(c) *Public Hearing and Approval.* In connection with the execution and delivery of the Agreement and upon the application and request of Lessee, \_\_\_\_\_ held a public hearing on its own behalf and on behalf of Lessee as required under Code § 147(f) regarding the proposed execution and delivery of the Agreement, at the time, date and place specified on **Exhibit A** after reasonable notice of the hearing advising the public that a public hearing would be held on such date to discuss the proposed execution and delivery of the Agreement and that interested parties would have an opportunity to express their views at that hearing was published on the date specified on **Exhibit A** in the newspaper specified on **Exhibit A**, which is a newspaper of general circulation in the jurisdiction of Louisville/Jefferson County Metro Government. The hearing was open to the public, and those present were invited to express their views relating to the execution and delivery of the Agreement and the proposed use of the proceeds of the Agreement. After the public hearing, the elected legislative body of Louisville/Jefferson County Metro Government, adopted an ordinance approving the execution and delivery of the Agreement. After the public hearing, Lessee passed its ordinance identified on **Exhibit A** authorizing and approving the execution and delivery of the Agreement. An affidavit of publication of the notice of the hearing and copies of the resolutions referenced in this subparagraph are contained in the Transcript.

(d) *IRS Form 8038.* A copy of IRS Form 8038 (Information Return for Tax-Exempt Private Activity Bond Issues) to be filed with the IRS in connection with the execution and delivery of the Agreement as required by Code § 149(e) is contained in the Transcript. Lessee will cause that IRS Form 8038 to be filed at the time and place required by the Code and will provide evidence of that filing to Lessor.

(e) *Registered Obligation.* The right to receive the Lease Payments will be issued and held in registered form within the meaning of Code § 149(a).

(f) *Lessee Reliance on Other Parties.* The expectations, representations and covenants of Lessee concerning certain uses of Net Proceeds and certain other moneys described in this Tax Compliance Agreement and other matters are based in whole or in part upon representations of Sublessee and Escrow Agent in this Tax Compliance Agreement or exhibits hereto. Although Lessee has made no independent investigation of the representations of other parties including Sublessee, Lessee is not aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of any representation made in this Tax Compliance Agreement or its exhibits.

**Section 2.2. Representations and Covenants of Sublessee.** Sublessee represents and covenants to Lessee and Escrow Agent as follows:

(a) *Tax-Exempt Status of Sublessee.* Sublessee (1) has been determined to be and is a Tax-Exempt Organization, and (2) has not declared and has not been determined to have any “unrelated business taxable income” as defined in Code § 512 which would have a material adverse effect on its status as a Tax-Exempt Organization or which, if that income were subject to federal income taxation, could have a material adverse effect on the condition, financial or otherwise, of Sublessee. Sublessee has received a letter from the Internal Revenue Service to the effect that it is a Tax-Exempt Organization, a copy of which is attached hereto as **Exhibit E**. That letter has not been withdrawn, and no audit or investigation by the Internal Revenue Service of the tax-exempt status of Sublessee is presently being conducted. There has been no change or threatened change in the status of Sublessee as a Tax-Exempt Organization as of the date hereof.

So long as any Lease Payments remain unpaid, Sublessee shall maintain its status as a Tax-Exempt Organization, and shall take no action or permit any action to be taken that could result in the alteration or loss of its status as a Tax-Exempt Organization.

(b) *Tax-Exempt Status of Lease Payments.* In order to maintain the exclusion of the interest portions of the Lease Payments from gross income for federal income tax purposes, Sublessee—

- (1) must take whatever action, and refrain from whatever action, necessary to comply with the applicable requirements of the Code;
- (2) must not use or invest, or permit the use or investment of, any Net Proceeds, other money held under the Agreement, or other funds of Sublessee, in a manner that would violate applicable provisions of the Code; and
- (3) must not use, or permit the use of, any portion of the Equipment in a manner that would violate applicable provisions of the Code.

(c) *Purpose of Agreement; Equipment.* The Agreement is being executed and delivered to provide funds to pay the costs of the Equipment to be located at the location specified in the Agreement.

(d) *Use of Net Proceeds and Equipment.*

(1) Use of Equipment. So long as any Lease Payments remain unpaid, Sublessee (A) in reliance and consistent with the determination of Special Tax Counsel that the Equipment is owned for federal income tax purposes by the Sublessee except for dispositions of property in the ordinary course of business, will cause the Equipment to be owned for federal income tax purposes by a governmental unit or an organization described in Code § 501(c)(3), and (B) will not use or permit the Equipment to be used in the trade or business of any person or entity other than a governmental unit or an organization described in Code § 501(c)(3), or in any unrelated trade or business as defined in Code § 513(a), or in any other manner or to any extent that would result in the inclusion of the interest portion of any Lease Payment, which is otherwise exempt from federal income taxation, in gross income for federal income tax purposes.

(2) Qualified 501(c)(3) Bonds.

(A) The amount of Net Proceeds used for a “private business use” will not exceed 5% of the Net Proceeds. Sublessee understands that, for purposes of this paragraph, use of the Equipment is treated as the use of Net Proceeds, and “private business use” means (1) use in a trade or business carried on by any person other than a governmental unit or a Tax-Exempt Organization, (2) any activity of a Tax-Exempt Organization that constitutes an “unrelated trade or business,” determined by applying Code § 513(a), or (3) use to pay costs of issuance (including underwriting discount or fee).

(B) Sublessee will not enter into or renew any “management contract” with any person other than a Tax-Exempt Organization or a governmental unit with respect to the management or operation of all or any portion of the Equipment, without first obtaining and delivering to Escrow Agent and Lessee an opinion of Special Tax Counsel, addressed to Escrow Agent and Lessee, that the management contract will not adversely affect the exclusion of the interest portion of any Lease Payments from gross income for federal income tax purposes. The term “management contract” is defined in Regulations § 1.141-3(b) as a management, service, or incentive payment contract with an entity that provides services involving all or a portion of any function of the Equipment, such as a contract to manage the Equipment. Contracts for services that are solely incidental to the primary governmental function of the Equipment (for example, contracts for janitorial, office equipment repair, billing or similar services) are not treated as management contracts.

(C) Sublessee will not enter into or renew a lease of all or any portion of the Equipment (disregarding portions used by members of the general public who use the Equipment on a short-term basis in the ordinary course of Sublessee’s business and portions used by a lessee under a short-term lease that has a term of one year or less, taking into account all options to renew and reasonably anticipated renewals) with any user that is not a Tax-Exempt Organization or a governmental unit, without first obtaining and delivering to Escrow Agent and Lessee an opinion of Special Tax Counsel, addressed to Escrow Agent and Lessee, that the lease will not adversely affect the exclusion of interest portions of the Lease Payments from gross income for federal income tax purposes.

(3) Reimbursement. Sublessee’s governing body adopted a resolution indicating its intent to enter into the Agreement to provide funds for the Equipment on the date specified on **Exhibit A**. A copy of that resolution is attached as **Exhibit F**. Sublessee understands that, if any Net Proceeds are used to reimburse Sublessee for costs of the Equipment paid before the Issue Date, those costs will constitute “eligible costs” only if the reimbursement is valid under Treas. Reg. § 1.150-2. Sublessee understands further that, in general, a reimbursement is valid only if (A) those costs were paid no sooner than 60 days before the date that resolution was adopted, and (B) Net Proceeds are allocated to reimburse those costs within 18 months after the later of the date those expenditures were made, or the date the Equipment is placed in service, but in no event later than three years after the date those expenditures were made.

(e) *Allocation of Sources and Uses.* The expected sources of funds, including the Net Proceeds and money contributed by Sublessee, and the expected uses of those amounts are shown on **Exhibit B**.

(f) *Prohibited Facilities.* No Net Proceeds will be used to provide any airplane, skybox, or other private luxury box, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises, as such terms are used in Code § 147(e).

(g) *Limit on Costs of Issuance.* Not more than 2% of the lesser of the principal amount of the Agreement or the sale proceeds of the Agreement will be used to pay issuance costs related to the Agreement.

(h) *Lease Payments Not Federally Guaranteed.* Sublessee will not take any action or permit any action to be taken which would cause the Agreement or the Lease Payments to be “federally guaranteed” within the meaning of Code § 149(b).

(i) *Reports to IRS; Form 8038.* Sublessee will assist Lessee in filing all appropriate returns, reports and attachments to income tax returns required by the Code, including without limitation the Information Return for Private Activity Bond Issues (Form 8038). Sublessee provided to Lessee the information contained in Parts II through VI of IRS Form 8038, which is contained in the Transcript, and such information is true, complete and correct as of the Issue Date. Sublessee provides the information regarding the Equipment for Part V of Form 8038 specified in **Exhibit C**.

(j) *No Hedge Bonds.* At least 85% of the Net Proceeds will be used to carry out the governmental purposes of the Agreement within three years after the Issue Date, and not more than 50% of the Net Proceeds will be invested in investments having a substantially guaranteed yield for four years or more.

(k) *Arbitrage Certifications.* The facts, estimates and expectations recited in **Article III** regarding the purpose of the Agreement, the investment and expenditure of Net Proceeds, the Equipment, the Escrow Fund created in the Escrow Agreement, the yield on investments, and the computation and payment of arbitrage rebate, are true and accurate as of the Issue Date; and the estimates and expectations recited in that Article are reasonable as of the Issue Date. Lessee, Lessor and Special Tax Counsel may rely on those statements and expectations. Sublessee does not expect that the Net Proceeds will be used in a manner that would cause the Agreement to be an “arbitrage bond” within the meaning of Code § 148, and to the best of Sublessee’s knowledge and belief, there are no other facts, estimates or circumstances that would materially change such expectations.

(l) *Rebate Payments.* Sublessee must pay or provide for payment to the United States or Escrow Agent all arbitrage rebate payments required under Code § 148 and this Tax Compliance Agreement, to the extent amounts are not otherwise available to Escrow Agent for that purpose.

(m) *Compliance with Future Tax Requirements.* Sublessee understands that the Code and the Regulations may impose new or different restrictions and requirements on Sublessee in the future. Sublessee must comply with such future restrictions that are necessary to maintain the exclusion of the interest portions of the Lease Payments from gross income for federal income tax purposes.

### **Section 2.3. Limit on Agreement Maturity.**

(a) *Average Economic life of Equipment.* Sublessee understands that under Code § 147(b), the average maturity of the principal portions of the Lease Payments cannot exceed 120% of the average, reasonably expected economic life of the Equipment, and that the economic life of the Equipment is measured from the later of (1) the Issue Date, or (2) the date on which the Equipment is placed in service. On **Exhibit C**, Sublessee has identified the components of the Equipment, the portion of their costs paid from Net Proceeds, the expected economic life of each component of the Equipment, and the average expected economic life of the Equipment.

(b) *Average Agreement Maturity.* The average maturity of the principal portions of the Lease Payments, as computed by Special Tax Counsel and set forth on **Exhibit D**, is less than 120% of the average, reasonably expected economic life of the Equipment. Sublessee must not make, or permit to be made, any changes in the Equipment or the use of the Net Proceeds that will cause the average maturity of the Lease Payments to exceed 120% of the average, reasonably expected economic life of the Equipment.

**Section 2.4. Representations and Covenants of Escrow Agent.** Escrow Agent represents and covenants to Lessee, Lessor and Sublessee as follows:

(a) Escrow Agent must comply with the applicable provisions of this Tax Compliance Agreement and any written letter or opinion of Special Tax Counsel which sets forth any action necessary to preserve the exclusion of the interest portions of the Lease Payments from gross income for federal income tax purposes.

(b) Escrow Agent, acting on behalf of Lessee, may from time to time cause a firm of attorneys, consultants or independent accountants or an investment banking firm to provide Escrow Agent with such

information as it may request in order to determine (in a manner reasonably satisfactory to Escrow Agent) all matters relating to (i) the Yield on the Agreement or Investments as it relates to any data or conclusions necessary to verify that the Agreement is not an “arbitrage bond” within the meaning of Code § 148, and (ii) compliance with arbitrage rebate requirements of Code § 148(f). All costs and expenses incurred in connection with supplying the foregoing information must be paid by Sublessee.

**Section 2.5. Survival of Representations and Covenants.** All representations, covenants and certifications of Lessee, Escrow Agent and Sublessee contained in this Tax Compliance Agreement will survive the execution and delivery of this Tax Compliance Agreement and the Agreement as representations of facts existing as of the date of execution and delivery of this Tax Compliance Agreement. The foregoing covenants of this Section will remain in full force and effect notwithstanding the defeasance of the Lease Payments and the discharge of the Agreement, until payment in full of the Lease Payments.

## ARTICLE III

### ARBITRAGE CERTIFICATIONS AND COVENANTS

**Section 3.1. Purpose.** The purpose of this Article is to certify, pursuant to Regulations § 1.148-2(b), the expectations of Lessee and Sublessee as to the sources, uses and investment of Net Proceeds and other money, in order to support Lessee’s conclusion that the Agreement is not an arbitrage bond. The person executing this Tax Compliance Agreement on behalf of Lessee is an officer of Lessee responsible for executing and delivering the Agreement.

**Section 3.2. Reasonable Expectations.** The facts, estimates and expectations of Lessee set forth in this Article are based upon Lessee’s understanding of the documents and certificates that comprise the Transcript, including (a) the Escrow Agreement, (b) the Agreement, (c) this Tax Compliance Agreement, and (d) representations and covenants of Sublessee and Escrow Agent contained in this Tax Compliance Agreement. To Lessee’s knowledge, the facts and estimates set forth in this Tax Compliance Agreement are accurate, and the expectations of Lessee set forth in this Tax Compliance Agreement are reasonable. Lessee has no knowledge that would cause it to believe that the representations, warranties and certifications described herein are unreasonable or inaccurate or may not be relied upon.

**Section 3.3. Authority and Purpose for Agreement.** Lessee is executing and delivering the Agreement simultaneously with the execution of this Tax Compliance Agreement, pursuant to the laws of the Commonwealth and an ordinance passed by the governing body of Lessee. The Agreement is being executed and delivered to provide funds to pay costs of acquiring and installing the Equipment.

**Section 3.4. Escrow Fund.** The Escrow Fund has been established in the custody of Escrow Agent under the Escrow Agreement:

**Section 3.5. Amount and Use of Agreement Proceeds.**

(a) *Amount of Net Proceeds.* The total proceeds to be received by Lessee from the execution and delivery of the Agreement will be the purchase price for the Lease Payments to be paid by Lessor, which is equal to the amount of Agreement Proceeds set forth on **Exhibit B**.

(b) *Use of Agreement Proceeds.* The Agreement Proceeds are expected to be deposited in the Escrow Fund to be held, invested and disbursed as provided in the Escrow Agreement.

**Section 3.6. No Over-Issuance.** The Net Proceeds, together with expected investment earnings on the proceeds and other money contributed by Sublessee, do not exceed the cost of the governmental purpose of the Agreement.



**Section 3.7. Installment Purchase Agreement/Sinking Funds.** Lessee is making the Net Proceeds available to Sublessee pursuant to the Agreement. Under the Agreement, Sublessee is required to make periodic payments to Lessor, as assignee of Lessee, in amounts sufficient to pay the Lease Payments. Neither Lessee nor Sublessee has established or expects to establish any sinking fund or other similar fund that is expected to be used to pay the Lease Payments.

**Section 3.8. Reserve, Replacement and Pledged Funds.**

(a) *Reserve Fund.* No reserve or replacement fund has been or will be established for the Lease Payments.

(b) *No Other Replacement Funds.* None of the Net Proceeds will be used as a substitute for other funds that were intended or earmarked to pay costs of the Equipment, and that have been or will be used to acquire higher yielding investments. Except for the Escrow Fund, there are no other funds pledged or committed in a manner that provides a reasonable assurance that such funds would be available for payment of the Lease Payments if Lessee or Sublessee encounters financial difficulty.

**Section 3.9. Yield.**

(a) *Offering Prices.* (1) All of the Lease Payments have been directly placed with Lessor. The aggregate initial purchase price of the Lease Payments is equal to the amount of Agreement Proceeds set forth on **Exhibit B**.

(b) *Agreement Yield.* Based on the placement price, the Yield to Lessor on the Agreement is the yield shown on **Exhibit D**, which has been computed by Special Tax Counsel.

(c) *Yield on Purpose Investment.* The Yield to Lessee on the Agreement does not exceed the Yield to Lessor on the Agreement by more than 1/8%, as permitted by Regulations § 1.148-2(d)(2)(i). In determining Yield on the Agreement, “qualified administrative costs” paid by Sublessee are treated as increasing Lessee’s payments for, or decreasing Lessee’s receipts from, the Agreement. Qualified administrative costs are costs of issuing, carrying or repaying the Agreement, and costs or expenses paid to purchase, carry, sell, or retire the Agreement, but excluding all fees paid to Lessee.

**Section 3.10. Arbitrage Covenants.**

(a) *Covenants of Lessee.* Lessee will not (to the extent within its power or discretion) use any money on deposit in any fund or account maintained in connection with the Agreement, whether or not the money was derived from Net Proceeds or from any other source, in a manner that would cause the Agreement to be an “arbitrage bond,” within the meaning of Code § 148. If Lessee is made aware that it is necessary to restrict or limit the Yield on the investment of money held by Escrow Agent under the Escrow Agreement, or to use any money in any certain manner to avoid the Agreement being classified as an arbitrage bond, Lessee will (to the extent within its power or discretion to direct such investments) deliver to Escrow Agent a written certificate of Lessee Representative to that effect and appropriate instructions specifying the investments to be made.

(b) *Covenants of Sublessee.* Sublessee will not take any action, fail to take any action, or permit any action to be taken, including without limitation any action relating to the investment of Gross Proceeds or the payment of arbitrage rebate, that would cause the Agreement to become an “arbitrage bond” within the meaning of Code § 148.

**Section 3.11. Miscellaneous Tax Matters.**

(a) *Expected Use.* Sublessee expects to use Equipment over the term of the Agreement.

(b) *No Abusive Arbitrage Device.* The Agreement is not and will not be part of a transaction or series of transactions that has the effect of (a) enabling Lessee or Sublessee to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and (b) overburdening the tax-exempt bond market.

(c) *Single Issue; No Other Issues.* The Agreement constitutes a single “issue” under Regulations § 1.150-1(c). No other obligations of Lessee (1) are being sold within 15 days of the sale of the Lease Payments to Lessor; (2) are being sold pursuant to the same plan of financing as the Agreement; and (3) are expected to be paid from substantially the same source of funds (disregarding guarantees from unrelated parties, such as bond insurance).

**Section 3.12. Conclusion.** On the basis of the foregoing facts, estimates and circumstances, Lessee does not expect that the Net Proceeds will be used in a manner that would cause the Agreement to be an “arbitrage bond” within the meaning of Code § 148.

## ARTICLE IV

### ARBITRAGE INVESTMENT AND REBATE INSTRUCTIONS

**Section 4.1. Rebate Covenants.** Sublessee agrees (a) to engage, at the expense of Sublessee, a Rebate Analyst to compute any arbitrage rebate on the Agreement in accordance with the Regulations, and (b) to pay to the United States, but solely from amounts or money provided by Sublessee, all arbitrage rebate on the Agreement in accordance with this Tax Compliance Agreement and the Regulations. Sublessee agrees to make payments to Escrow Agent as necessary to comply with the rebate requirements of Code § 148(f) and the Regulations.

**Section 4.2. Investments.** All Gross Proceeds must be invested in accordance with this Section.

(a) *Temporary Periods/Yield Restriction.* Any Gross Proceeds not invested as described below must be invested at a yield not greater than the yield on the Agreement.

(1) Escrow Fund. Net Proceeds deposited in the Escrow Fund may be invested without yield restriction for three years after the Issue Date. If any Net Proceeds remain in the Escrow Fund after three years, they may continue to be invested without yield restriction so long as yield reduction payments (including payment of rebate amounts) are made to the United States in accordance with Regulations § 1.148-5(c).

(2) Minor Portion. In addition to the amounts described above, Gross Proceeds not exceeding the Minor Portion may be invested without yield restriction.

(b) *Fair Market Value.*

(1) General. No Investment may be acquired for an amount (including transaction costs) in excess of the fair market value of the Investment, or sold or otherwise disposed of for an amount (including transaction costs) less than the fair market value of the Investment. The fair market value of any Investment is the price a willing buyer would pay to a willing seller to acquire the Investment in a bona fide, arm’s-length transaction. Fair market value must be determined in accordance with § 1.148-5 of the Regulations.

(2) Established Securities Market. If an Investment is purchased or sold in an arm’s-length transaction on an established securities market (within the meaning of Code § 1273), the purchase or sale price constitutes the fair market value. Where there is no established securities market for an Investment, market value must be established using one of the paragraphs below.

- (3) Certificate of Deposit. The purchase price of a certificate of deposit (a “CD”) is treated as its fair market value on the purchase date if (i) the CD has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal; (ii) the yield on the CD is not less than the yield on reasonably comparable direct obligations of the United States; and (iii) the yield is not less than the highest yield published or posted by the CD issuer to be currently available on reasonably comparable CDs offered to the public.
- (4) Guaranteed Investment Contract. The purchase price of a Guaranteed Investment Contract is treated as its fair market value on the purchase date if all of the following requirements are met—
- (A) Bona Fide Solicitation for Bids. The Sublessee or the Escrow Agent makes a bona fide solicitation for the Guaranteed Investment Contract, using the following procedures:
- (1) The bid specifications are in writing and are timely forwarded to potential providers.
  - (2) The bid specifications include all “material” terms of the bid. A term is material if it may directly or indirectly affect the yield or the cost of the Guaranteed Investment Contract.
  - (3) The bid specifications include a statement notifying potential providers that submission of a bid is a representation (a) that the potential provider did not consult with any other potential provider about its bid, (b) that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the Lessee, the Sublessee, the Escrow Agent, or any other person (whether or not in connection with the bond issue), and (c) that the bid is not being submitted solely as a courtesy to the Lessee, the Sublessee, the Escrow Agent, or any other person, for purposes of satisfying the requirements of the Regulations.
  - (4) The terms of the bid specifications are “commercially reasonable.” A term is commercially reasonable if there is a legitimate business purpose for the term other than to increase the purchase price or reduce the yield of the Guaranteed Investment Contract.
  - (5) The terms of the solicitation take into account the Sublessee’s reasonably expected deposit and draw-down schedule for the amounts to be invested.
  - (6) All potential providers have an equal opportunity to bid. For example, no potential provider is given the opportunity to review other bids (i.e., a last look) before providing a bid.
  - (7) At least three “reasonably competitive providers” are solicited for bids. A reasonably competitive provider is a provider that has an established industry reputation as a competitive provider of the type of investments being purchased.
- (B) Bids Received. The bids received by the Sublessee or Escrow Agent must meet all of the following requirements:
- (1) The Sublessee or Escrow Agent receives at least 3 bids from providers that were solicited as described above and that do not have a “material financial interest” in the issue. For this purpose, (a) a lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until 15 days after the issue date of the issue; (b) any entity acting as a financial advisor with respect to the purchase of the Guaranteed Investment Contract

at the time the bid specifications are forwarded to potential providers has a material financial interest in the issue; and (c) a provider that is a related party to a provider that has a material financial interest in the issue is deemed to have a material financial interest in the issue.

(2) At least one of the 3 bids received is from a reasonably competitive provider, as defined above.

(3) If the Sublessee or Escrow Agent uses an agent or broker to conduct the bidding process, the agent or broker did not bid to provide the Guaranteed Investment Contract.

(C) Winning Bid. The winning bid is the highest yielding bona fide bid (determined net of any broker's fees).

(D) Fees Paid. The obligor on the Guaranteed Investment Contract certifies the administrative costs that it pays (or expects to pay, if any) to third parties in connection with supplying the Guaranteed Investment Contract.

(E) Records. The Escrow Agent retains the following records with the bond documents until three years after the last outstanding Bond is redeemed:

(1) A copy of the Guaranteed Investment Contract.

(2) The receipt or other record of the amount actually paid by the Sublessee or Escrow Agent for the Guaranteed Investment Contract, including a record of any administrative costs paid by the Sublessee or Escrow Agent, and the certification as to fees paid, described in Section 4.2(b)(4)(D) above.

(3) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results.

(4) The bid solicitation form and, if the terms of Guaranteed Investment Contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation.

(5) Other Investments. If an Investment is not described above, the fair market value may be established through a competitive bidding process, as follows:

(A) at least three bids on the Investment must be received from persons with no financial interest in the Agreement (*e.g.*, as underwriters or brokers); and

(B) the yield on the Investment must be equal to or greater than the yield offered under the highest bid.

### **Section 4.3. Spending Exceptions.**

(a) *Six-Month Exception*.

(1) The obligation to pay rebate to the United States will be treated as satisfied if—

(A) the Gross Proceeds (as modified below) are allocated to expenditures for the governmental purpose of the Agreement within six months after the Issue Date; and

(B) rebate is paid in accordance with Code § 148(f) on all Gross Proceeds not required to be spent as provided in clause (A) (other than earnings on amounts in a bona fide debt service fund).

(2) For purposes of paragraph (1) above, Gross Proceeds do not include amounts that become Gross Proceeds after the end of the 6-month spending period, but were not expected to be Gross Proceeds as of the Issue Date. The use of Gross Proceeds to pay principal portions of the Lease Payments will not be treated as an expenditure of Gross Proceeds for this purpose.

(b) *Eighteen-Month Exception.*

(1) The obligation to pay rebate to the United States will be treated as satisfied if—

(A) the Gross Proceeds (as modified below) are allocated to expenditures for the governmental purpose of the Agreement in accordance with the following schedule:

<b><u>Time Period after the Issue Date</u></b>	<b><u>Minimum Percentage of Gross Proceeds Spent</u></b>
6 months	15
12 months	60
18 months	100

and;

(B) rebate is paid in accordance with Code § 148(f) on all Gross Proceeds not required to be spent as provided in clause (A) (other than earnings on amounts in a bona fide debt service fund).

(2) For purposes of paragraph (1) above, Gross Proceeds do not include amounts that become Gross Proceeds after the end of the 18-month spending period, but were not expected to be Gross Proceeds as of the Issue Date. The Agreement meets the 18-month expenditure test even if, at the end of the 18-month period, Gross Proceeds not exceeding a Reasonable Retainage remain unspent, so long as those proceeds are spent within 30 months after the Issue Date. In addition, the failure to satisfy the final spending requirement at the end of the 18-month period is disregarded if Sublessee uses due diligence to complete the acquisition and installation of the Equipment, and the amount of Gross Proceeds unspent does not exceed the lesser of 3% of the aggregate issue price of the Agreement or \$250,000. However, the use of Gross Proceeds to pay principal portions of the Lease Payments will not be treated as an expenditure of Gross Proceeds for this purpose.

#### **Section 4.4. Computation and Payment of Arbitrage Rebate.**

(a) *Computation of Rebate Amount.* Sublessee must engage a Rebate Analyst to compute (at the expense of Sublessee) arbitrage rebate in accordance with the Regulations within 45 days after each Computation Date. Upon each computation of arbitrage rebate, Escrow Agent must give written notice to Lessee, Lessor and Sublessee by first class mail, postage prepaid, including a copy of the computation, showing the rebate amount due and the amount then on deposit in the Escrow Fund, together with an opinion or certificate of the Rebate Analyst stating that arbitrage rebate was determined in accordance with the Regulations. If the amount on deposit in the Escrow Fund is less than the rebate amount due, Sublessee must, within 50 days after the Computation Date, pay to Escrow Agent the amount of the deficiency for deposit into the Escrow Fund. After the Lease Payments are paid in full, any money left in the Escrow Fund must be paid to Sublessee and may be used for any purpose not prohibited by law.

(b) *Rebate Payments.* Escrow Agent must pay (but solely from money in the Escrow Fund or provided by Sublessee) to the United States the rebate amounts as follows: the first rebate installment must be made within 60 days after a Computation Date not later than five years after the Issue Date; subsequent rebate installment payments must be within 60 days after a Computation Date not later than five years after the previous Computation Date for which an installment payment was made; and the final rebate payment must be made within 60 days after the Lease Payments are paid in full. Each rebate payment must be mailed or delivered to:

Internal Revenue Service Center  
Ogden, Utah 84201

or to such other location as the IRS may direct, and shall be accompanied by IRS Form 8038-T and such other forms, documents or certificates as may be required by the Regulations.

**Section 4.5. Records.** Escrow Agent must retain detailed records with respect to each Investment, including: (a) purchase date, (b) purchase price, (c) information establishing the fair market value on the date that Investment was allocated to the Agreement, (d) any accrued interest paid, (e) face amount, (f) coupon rate, (g) frequency of interest payments, (h) disposition price, (i) any accrued interest received, and (j) disposition date. Escrow Agent must retain all such records until six years after the Lease Payments are paid in full and shall provide them to Lessor upon request

**Section 4.6. Filing Requirements.** Lessee, Escrow Agent and Sublessee must file or cause to be filed with the Internal Revenue Service all reports and other documents required by the Code as specified in any opinion of Special Tax Counsel.

**Section 4.7. Survival after Defeasance.** Notwithstanding anything in the Agreement to the contrary, the obligation to pay arbitrage rebate to the United States will survive the payment or defeasance of the Lease Payments.

## ARTICLE V

### MISCELLANEOUS PROVISIONS

**Section 5.1. Term of Tax Compliance Agreement.** This Tax Compliance Agreement will become effective upon the execution and delivery of the Agreement and will continue in force and effect until the Lease Payments have been paid in full; except that the provisions of **Article IV** regarding payment of arbitrage rebate and all related penalties and interest will remain in effect until all those amounts are paid to the United States.

**Section 5.2. Amendments.** This Tax Compliance Agreement may be amended from time to time by the parties without notice to or the consent of Lessor, but only if the amendment is in writing and is accompanied by an opinion of Special Tax Counsel to the effect that under then existing law, assuming compliance with this Tax Compliance Agreement as so amended, the Escrow Agreement and the Agreement, the amendment will not cause the Agreement to be an arbitrage bond under Code § 148 or otherwise cause interest portions of the Lease Payments to be included in gross income for federal income tax purposes.

**Section 5.3. Permitted Deviations.** Lessee, Sublessee or Escrow Agent may deviate from the provisions of this Tax Compliance Agreement if furnished with an opinion of Special Tax Counsel to the effect that the proposed deviation will not adversely affect the validity of the Agreement or cause interest portions of the Lease Payments to be included in gross income for federal income tax purposes. Lessee, Sublessee and Escrow Agent will comply with any further or different instructions provided to them in an opinion of Special Tax Counsel to the effect that the further or different instructions need to be complied with in order to maintain the validity of the Agreement or prevent the occurrence of an Event of Taxability.

**Section 5.4. Reliance.** In delivering this Tax Compliance Agreement, Lessee and Escrow Agent are independently making only those certifications, representations and agreements specifically attributed to them. The balance of the certifications, representations and agreements contained in this Tax Compliance Agreement are those of Sublessee, and Lessee and Escrow Agent are relying on Sublessee with respect to them. Neither Lessee nor Escrow Agent is aware of any facts or circumstances that would cause it to question the accuracy of the facts, circumstances, estimates or expectations of Sublessee and, to the best of Lessee's and Escrow Agent's knowledge, those facts, circumstances, estimates and expectations are reasonable.

**Section 5.5. Severability.** If any provision in this Tax Compliance Agreement or in the Agreement is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.

**Section 5.6. Benefit of Agreement.** This Tax Compliance Agreement is binding upon Lessee, Sublessee, and Escrow Agent and their respective successors and assigns, and inures to the benefit of Lessee, Sublessee, Escrow Agent, Lessor and their successors and assigns. Nothing in this Tax Compliance Agreement or the Agreement, express or implied, gives to any person, other than the parties to this Tax Compliance Agreement, Lessor and their successors and assigns, any benefit or any legal or equitable right, remedy or claim under this Tax Compliance Agreement. The certifications, representations and expectations made in this Tax Compliance Agreement are intended, and may be relied upon, as a certification of an officer of Lessee given in good faith described in Section 1.148-2(b)(2) of the Regulations. Lessee and Sublessee understand that their certifications will be relied upon by Lessee in the execution and delivery of the Agreement and by Special Tax Counsel in rendering its opinion as to the exclusion from federal gross income of the interest portions of the Lease Payments.

**Section 5.7. Execution in Counterparts.** This Tax Compliance Agreement may be executed in any number of counterparts, each of which will be an original, but all counterparts will together constitute the same instrument.

**Section 5.8. Governing Law.** This Tax Compliance Agreement will be governed by and construed in accordance with the laws of the Commonwealth.

**Section 5.9. Third Party Beneficiary.** Lessor is a third party beneficiary of this Tax Compliance Agreement.

**THE PARTIES** have caused this Tax Compliance Agreement to be duly executed by their duly authorized officers, all as of the day and year first above written.

**LOUISVILLE/JEFFERSON COUNTY METRO  
GOVERNMENT**

By \_\_\_\_\_  
Title: \_\_\_\_\_

**BRANCH BANKING AND TRUST COMPANY,  
as Escrow Agent**

By \_\_\_\_\_  
Title: \_\_\_\_\_

**UNIVERSITY MEDICAL CENTER, INC., d/b/a  
UNIVERSITY OF LOUISVILLE HOSPITAL**

By \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT A  
TO TAX COMPLIANCE AGREEMENT**

**Relevant Governmental and Sublessee Actions**

**A. Public Hearing**

**Date and Time of Public Hearing:** [Public Hearing Date], at \_\_\_\_\_ .m.

**Place of Public Hearing:** [Address of Local Government Participant]

**Newspaper for Publication of  
Public Hearing Notice:** *[Name of Newspaper]*

**Date of Publication of Public  
Hearing Notice:** [Publication Date]

**B. Local Government Participant Approval**

**Date Elected Legislative Body of Local  
Government Participant Adopted  
Resolution Approving Execution  
and Delivery of the Agreement:** [Public Hearing Date]

**C. Lessee Ordinance**

**Authorizing Ordinance:** Ordinance No. \_\_\_\_\_

**Date Lessee Adopted  
Authorizing Ordinance:** [Lessee Ordinance Date]

**D. Sublessee Resolution**

**Date Sublessee's Governing Body  
Adopted Resolution Indicating Intent  
to Enter into the Agreement:** [Sublessee Resolution Date]

**EXHIBIT B  
TO TAX COMPLIANCE AGREEMENT**

**Application of Funds**

<b><u>Sources of Funds:</u></b>	<b><u>Amount</u></b>
Agreement Proceeds	\$ _____
Estimated investment earnings on proceeds held in Escrow Fund during the acquisition period	_____
Funds contributed by Sublessee	_____
Total Sources:	\$ _____

**Use of Funds:**

	<b><u>Agreement Proceeds*</u></b>	<b><u>Sublessee Contribution</u></b>
Equipment	\$ _____	\$ _____
Interest portions of the Lease Payments to be paid during acquisition period	_____	_____
Costs of Issuance	_____	_____
Total Uses:	\$ _____	\$ _____

\* Agreement Proceeds include expected investment earnings on Net Proceeds.

**EXHIBIT C  
TO TAX COMPLIANCE AGREEMENT**

**Description of Equipment**

**A. General Nature of the Equipment**

The Equipment is to be used for the Sublessee's \_\_\_\_\_.

**B. Location of the Equipment**

The Equipment is located, or upon its delivery to Sublessee will be located, at [Address of Equipment] in the City of \_\_\_\_\_, \_\_\_\_\_.

**C. Average Reasonably Expected Economic Life**

<u>Description of Assets</u>	<u>Total Cost</u>	<u>Amount Financed with Net Proceeds</u>	<u>Year Placed in Service</u>	<u>Economic Life (Years)</u>
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Totals:

Average Reasonably Expected Economic Life: \_\_\_\_\_ years

120% of Average Economic Life (Maximum Permitted Average Maturity of the Lease Payments): \_\_\_\_\_ years

**D. Form 8038 Information**

Line 31—Type of Property Financed by Nonrefunding Proceeds:

c	Equipment with recovery period of more than 5 years	\$_____
d	Equipment with recovery period of 5 years or less	_____

Line 32—North American Industry System Classification  
of the Equipment: \_\_\_\_\_

**EXHIBIT D**  
**TO TAX COMPLIANCE AGREEMENT**

**Computation of Average Maturity and Agreement Yield**

**EXHIBIT E**  
**TO TAX COMPLIANCE AGREEMENT**

**501(c)(3) Determination Letter**

**EXHIBIT F**  
**TO TAX COMPLIANCE AGREEMENT**

**Sublessee's Reimbursement Resolution**